IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
MONDAY, THE TWENTY FIRST DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 16386 of 1994

Between:
M/s.The Andhra Sugars Ltd., Venkatarayapuram, Tanuku rep. by its Chairman&Managing Director Shri M.Harichandra Prasad.

..... PETITIONER

AND

1. The State of A.P rep.by its Secretary Revenue Dept Secretariat Hyderabad.
2. The Commissioner of Excise, Andhra Pradesh,Gruha Kalpa Buildings, Hyderabad.
3. The Asst.Commissioner of Excise, Vijayawada.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction or a writ more particularly one in the nature of Writ of Mandamus directing the respondent not to enforce the demand raised in Proceedings dated 6-1-1992, issued by the Asst. Commissioner of Excise, Hyderabad vide his proceedings Rc.No.534/84/B as confirmed by the 2nd respondent vide his proceedings Cr.No.1052/94/CE/J2 dated 6-1-1992 after declaring a) that the action of the respondents in levying and demand as ultra vires the powers of the 1st respondent; b) impugned demand as ultra vires of the A.P. Excise Act; C) and declare the general norms fixed by the High Level Committee as informed to the petitioner by the 2nd respondent through letter dated 31-8-88 are non statutory and as such are arbitrary and unenforceable in law and pass such other order or orders.

Counsel for the Petitioner: C.KODANDA RAM

Counsel for the Respondent No.: GP FOR PROHIBITION & EXCISE

The Court Made the Following :

O R D E R :

The petitioner, a Company registered under the Companies Act, 1956, assails the demand notice dated 06.01.1992 issued by the third respondent calling upon the petitioner – Company to pay Rs.38,13,168-98 (Rupees thirty eight lakhs thirteen thousand one hundred sixty eight and ninety eight paise only) towards excise duty on the excess consumption of Rectified Spirit (Industrial Alcohol) or else for the manufacture of Ethile Acetate for the years 1974-75 and 1980-81.

The question whether the State has power to levy and collect the duties on Industrial Alcohol, is no more *res integra*. A Seven- Judge Constitutional Bench of the Supreme Court in **Synthetics and Chemicals Ltd., v. State of U.P**[1] has categorically ruled that in respect of Industrial Alcohol or Rectified Spirit falling under Schedule VII List II of Entry 51, the State has no legislative competence to levy and collect any duties. The same view was reiterated subsequently in many judgments of the Supreme Court including **State of U.P. v. Modi Distillaries**[2]. Further, it is brought to my notice that the judgment of this Court, in **Deccan Sugar & Abkari Co., Ltd., v. Commissioner of Excise, Andhra Pradesh,** wherein this Court upheld such levy, was reversed by the Supreme Court of India in **Deccan Sugar & Abkari Co., Ltd., v. Commissioner of Excise, Andhra Pradesh**[3] and held that unless the liquor is fit for human consumption, State Legislature cannot impose any excise duty on the Rectified Spirit. Whether it is excess or the loss of Rectified Spirit, the third respondent could not have issued such demand notice as the A.P. Excise Act, 1968 consumption does not permit such levy.

The writ petition is accordingly allowed.

(V.V.S.RAO)

21.06.2004
pln

ASSISTANT REGISTRAR

// TRUE COPY //

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Monday the twenty first of June, two thousand and four.

SECTION OFFICER

To
1. The Secretary, Revenue Dept., Secretariat, Hyderabad.
2. The Commissioner of Excise, Gruhakalpa Buildings, Hyderabad.
3. The Assistant Commissioner of Excise, Vijayawada.
4.2CCs to the G.P. for Prohibition & Excise, High Court Buildings,Hyderabad.
2.2CD copies

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[1] (1990) 1 SCC 109

[2] 1995 Judgment Today (6) SC 523 = (1995) 5 SCC 753

[3] (2004) 1 SCC 243